Don B 420414

P-1479

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From: Perry Hock [mailto:phock@ghtesting.com]
Sent: Tuesday, February 28, 2006 11:38 AM
To: Burger, Donald <PHMSA>
Subject: How to petition for reconsideration of an interpretation

Don,

PHMSA-2006-26160-1

I just found out this morning a scenario that has me troubled mostly due to an interpretation given by the DOT a few years back.

In the 1995 we certified a pack that had 4-1 gallons manufactured by company 'alpha' – company alpha was providing a certified UN pack to their customers. Alpha also manufactured the 1 gallon bottle.

In 1997, they sent the packs to us for testing. The packs failed (actually the plastic bottle split open). They resubmitted the same pack, claiming they modified the machinery and it again failed. They tried I think three more times to get the pack to pass and it never did.

In 2006 – we had a call from someone a third party about the pack. The pack is marked as manufactured in 2004 but the report was a self certified report but still using OUR +AP number from 1995.

Now there are several problems – for us, the number should not be used because the pack failed, but due to the DOT's interpretation and allowing the number to be transferred to other parties, it is still being used. In Chicago, I know many of the labs objected to this interpretation – this is a classic example of why we objected. We have no control or association with that pack.

Also now tied into this is the record keeping requirement. Since the pack, unknown to gh Testing and since we thought it was a failure, we archived the record of testing for the next three years (actually to 2001). Why would we be responsible for maintaining a report beyond three years when the pack clearly FAILED our testing. But since the pack is still manufactured, and marked, with our marking, the interpretation would still apply.

So there are several issues I would like to bring up for reconsideration on interpretation.

1 – allowing a third party lab mark to be used when continued certification is conducted by someone else
2 – the record keeping requirement of 'until the pack is no longer manufactured' to something more realistic like "maintaining the records for the duration of the certification plus three years beyond the last certification". It should no longer be our responsibility to provide information on a packaging we have no control or approval over.

What steps need to be taken to ask for reconsideration of a letter of interpretation?

Regards,

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